IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1615 OF 2007

Manilal Patel and Co. ..Petitioner
Vs.
Daulatram Rameshwarlal
Pvt. Ltd. ..Respondent

Mr. D.M. Vora for petitioner.
Mr. Chandra Naik for respondent.

CORAM: B.H. MARLAPALLE, J.

Date : March 23, 2007.

P.C.:

1. Heard the learned counsel for the petitioner. Mr. Naik appears for the respondent. The present respondent instituted L.E. & C. Suit No. 46/55 of 2004 against the present petition. After filing the Written Statement, the defendant moved an application under Section 9A of C.P.C. which came to be registered as Interim Notice No.812 of 2004. The learned Judge of the Small Causes Court at Mumbai was pleased to reject the said application vide his order dated 12/4/2005 and the said order was challenged in Appeal No.383 of 2005. The Lower Appellate Court was pleased to dismiss the appeal on 1/12/2006 and hence

this petition.

2. The application under Section 9A of C.P.C. was filed on the grounds that (a) in Suit No.124/164 of 1979 a decree of eviction was passed on 17/12/1988 and the defendants had filed an obstruction application in the execution of the said decree, the application was rejected and consequently the suit premises were handed over to the original landlord, namely, the Bombay Port Turst, (b) the suit was hit by limitation and (c) in any case the plaintiff was not in possession of the suit premises and, therefore, there was no cause of action to file the suit.

3. In or along with the application there is no proof even prima facie brought before the courts below that possession of the suit premises was handed over to the original landlord and that the plaintiff is not in possession or the defendant is not in possession of the suit premises. The contentions raised by the plaintiff on the issue of handing over the possession to the original landlord as well as the issue of limitation will have to be decided on the basis of the

evidence that the parties may adduce. The application proceeds on the basis that the possession was admittedly handed over to the original landlord and this admission is nowhere found in the pleadings as of now.

4. Hence, the view taken by both the courts below concurrently cannot be termed as perverse or illegal and, therefore, this petition under Article 227 of the Constitution must fail at the threshold.

5. The petition is rejected.

(B.H. Marlapalle,J.)